IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 618 of 1999()

ST.174/1998 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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APPELLANT/COMPLAINANT:

P.SURENDRAN,PROPRIETOR,HOTEL PADMA,VANCHIYOOR, THIRUVANANTHAPURAM,RESIDING AT CHENNAMKONATHU PUTHEN VEEDU, VALLANADU, THIRUVANANTHAPURAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS/ACCUSED AND STATE:

1.B.R.KRISHNA PARASAD, SON OF BALACHANDRAN NAIR, VLATHIKONATHU THADATHANKATTU PUTHEN VEEDU, VATTAPPARA, KALLAYAM, THIRUVANANTHAPURAM.

2.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.618 OF 1999 ()

Dated this the 29th day of November, 2006

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act against the 1st respondent. When the case was posted on 30.3.1999, since the complainant was not present accused was acquitted under Section 256 (1) of the Code of Criminal Procedure. It is stated in the appeal memorandum that case was posted for hearing and the presence of the complainant is not necessary. It is also stated that he was absent on 30.3.1999 only because he was not well and the matter was entrusted to the lawyer for making an application for exemption from appearance. But court acquitted the accused under Section 256 (1) of Cr.P.C. much accurately. If the complainant is absent the power under Section 256 (1) should not be used mechanically. Since the appellant had given sufficient reasons for his non-appearance, I am inclined to give one more opportunity for the complainant to appear and therefore I remand the matter to the trial court.

Appellant may appear before the trial court on 9.1.2007. Trial court shall intimate the date of posting to the advocate appearing for the accused before the court below. Hence appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.618 OF 1999

JUDGMENT

29th November, 2006